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BEFORE THE

Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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Review of the Commission's Regulations
Governing Attribution of Broadcast
and Cable/MDS Interests

)
)
) MM Docket No. 94-150
)
)

Review of the Commission's Regulations
and Policies Affecting Investment in

) MM Docket No. 92-51
)
)

Reexamination of the Commission's
Cross-Interest Policy

) MM Docket No. 87-154
)
)

To: The Commission

COMMENTS OF THE JET BROADCASTING CO., INC.

The Jet Broadcasting Co, Inc. ("Jet"), licensee of Stations WJET-TV, Channel 24, and WJET(FM), Erie, Pennsylvania, herewith submits its comments with respect to the Further Notice of Proposed Rule Making ("FNPRM") in the above-captioned proceedings. In particular, Jet will address the attribution of television local marketing agreements ("LMAs").

I. Introduction

Jet is uniquely situated to offer its perspective as to the necessity of considering television LMAs as attributable interests. Jet is the licensee of a television station in a small television

market,¹ Station WJET-TV, Erie, Pennsylvania.² The Erie, Pennsylvania television market also happens to have a television LMA in effect, from which Jet has experienced adverse repercussions. Therefore, the comments of Jet in the instant matter are particularly insightful.

II. Television LMAs Should Be An Attributable Interest

Jet agrees with the Commission's tentative proposal that "time brokerage of another television station in the same market for more than fifteen percent of the brokered television station's weekly broadcast hours [should] be held to be attributable, and therefore [should] count toward the brokering television licensee's national and local ownership limits," FNPRM at ¶ 27, at least with respect to small television markets. While the Commission has admonished broadcasters that the licensee of a brokered station must exercise ultimate control of the brokered station, see FNPRM at ¶ 31, the brokering station, nevertheless, can wield considerable influence over the programming, personnel and operational aspects of the brokered station. Therefore, the licensee of the brokering station should be attributed with the brokered station for purposes of all ownership rules if the LMA accounts for more than fifteen percent of the brokered station's air-time.

As Jet suggests in the companion rule making proceeding reviewing the Commission's rules with respect to local ownership, the "one-to-a-market" rule and television LMAs, in small television markets, control of one half or more of the television stations is detrimental to competition and diversity. This is the case regardless of whether operational control is by means

¹ A "small television market" shall be defined as a market in which there are four or fewer commercial television stations with overlapping Grade A contours.

² The Erie, Pennsylvania television market is comprised of only four commercial stations -- one VHF and three UHF.

of outright ownership or through a LMA. See Comments of The Jet Broadcasting Co., Inc., in MM Docket Nos. 91-221 and 87-7 (filed February 7, 1997) at 5, 9-11 (hereinafter "Jet Ownership Comments").

In small television markets, common operation of two television stations results in a discernable reduction in the number of media voices available. Unlike in larger television markets, the absence of an additional media voice has readily identifiable effects on competition and diversity.

Common operation of two television stations results in certain economies of scale, e.g., reduction in overhead costs and consolidation of personnel. This permits the operating entity to focus its spending on more desirable programming, which translates into larger audiences. With the ability to reach larger audiences, advertisers are more likely to advertise on such stations, despite the combined entity's ability to demand higher advertising rates. Other stations which cannot command such audiences lose important advertising revenue. This loss of advertising revenue detracts from such stations' ability to provide attractive programming, thus further debilitating these stations. Eventually, the combined entity may drive other stations off the air.

In addition to competition being greatly diminished in small television markets, common operation of two television stations by means of a television LMA noticeably and adversely affects viewpoint diversity. In larger television markets, the loss of a media voice has less readily identifiable effects on viewpoint diversity. In a larger television market, there are numerous other media outlets, e.g., newspapers, radio and cable, to present diverse viewpoints. Thus, notwithstanding the loss of an additional media outlet, a larger market is sufficiently

diverse by virtue of its size, and the adverse consequences of consolidation of two television stations will not be as severe.

In a small television market, however, the lost media voice will remain lost. In small markets, there are insufficient economic incentives to attract additional media voices, whether by means of television, radio, cable or newspaper. The dynamics of the small market are prohibitive to new competition. For example, the audience base is significantly smaller and advertising revenues are substantially less. The costs of operation, however, do not necessarily correlate to the size of the market, e.g., equipment costs are constant, notwithstanding the market size. In addition, small markets have smaller populations, therefore, there is insufficient consumer demand to sustain numerous media outlets. Thus, the media voice lost because of the television LMA remains lost. That loss unduly concentrates an already concentrated television market. When there is undue concentration in a particular medium viewpoint diversity is sacrificed. Hence, as demonstrated by the foregoing, common operation, irrespective of the fact that the brokered station remains ultimately responsible for the station, deters competition and diversity in small television markets.

III. Filing of LMAs


In accordance with its tentative proposal, the Commission should require television LMAs to be filed with the Commission. Currently, the Commission observes an interim policy, which requires parties to a television LMA to file it with the Commission only if an application is before the Commission. See Processing of Applications Proposing Local Marketing Agreements (Public Notice), Mimeo No. 54161 (June 1, 1995). In the absence of a pending application, a television LMA is merely required to be "kept at the station and . . . made available for

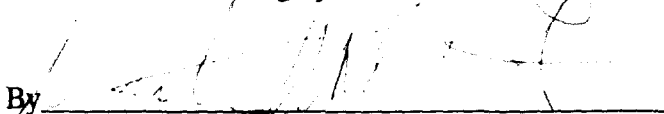
inspection upon request by the Commission." See Memorandum Opinion and Order and Further Notice of Proposed Rule Making in MM Docket No. 91-140, 7 FCC Rcd 6387, 6402 n. 100 (1992); 47 C.F.R. § 73.3613(e). Requiring television LMAs to be filed with the Commission will provide it with the information necessary for it to ensure that parties to television LMAs do not engage in unauthorized transfers of control.

IV. Conclusion

Since smaller television markets are unable to absorb the loss of a media voice, it is imperative that restrictions are implemented to prevent common operation of two television stations. Thus, it is reasonable and necessary for the Commission to attribute ownership to licensees of brokering stations involved in television LMAs, at least in small television markets where the common operation will undermine the Commission's goals of competition and diversity. In addition, it is appropriate for the Commission to require filing of television LMAs to ensure that proper Commission oversight is not frustrated.

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